IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2897 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GUJARAT STATE ROAD TRANSPORT CORPORATION - Petitioner(s)
Versus
BABUBHAI SHANKARBHAI PATEL - Respondent(s)

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Appearance :

MS MONALI H BHATT for Petitioner(s) : 1,
RULE NOT RECD BACK for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 19/06/2006

ORAL JUDGMENT

1. Heard the learned Advocate, Ms.Monali H. Bhatt, appearing on behalf of petitioner – Corporation.

2. In the present petition, the petitioner – Corporation has challenged the award passed by Industrial Tribunal, Ahmedabad in Reference (IT) No.13 of 1998 dated 3.2.2005. The Industrial Tribunal has set aside the punishment order dated 22.3.1995 of stoppage of two increments with cumulative effect, with a direction to Corporation to pay difference of salary to the workman.

3. Initially, this Court has issued Rule and ad-interim relief in terms of Para.9(C) has been granted. Notice of rule has remained unserved. However, with the consent of learned Advocate, Ms.Bhatt, this matter is taken up for final hearing today.

4. Learned Advocate, Ms.Monali Bhatt, submitted that Industrial Tribunal has committed gross error in setting aside punishment. She submitted that driver of Corporation was negligent while driving the vehicle and due to his negligence and

carelessness, accident was occurred on 3.2.1991. She also submitted that charge sheet was served on 6.6.1994 and thereafter, reply was received from the workman. Then, after completion of departmental inquiry, punishment order was passed by competent authority. She submitted that in MACT case, Corporation held liable, then, they should have to pay compensation and, therefore, she submitted that driver was remained negligent and that is how, accident occurred. Therefore, punishment order passed by competent authority is legal and valid. The Tribunal has committed an error in interfering with the punishment.

5. I have considered the submissions made by learned Advocate, Ms.Monali Bhatt and have also perused the award passed by Industrial Tribunal. The accident occurred on 3.2.1991. At that time, respondent workman was working as driver in route Unava to Kalol. The accident occurred between Sargasan and Tarapur. One Fiat Car was damaged to the extent of Rs.15,000/- and ST Bus was found to

be damaged to the extent of Rs.500/-. The passengers travelling in Fiat Car were also injured and driver of Fiat Car was died after the accident. The Corporation has produced papers of departmental inquiry vide Exh.10 to Exh.21 which have been exhibited by the Tribunal. The legality and validity of departmental inquiry was not challenged by the workman. Then, Industrial Tribunal has heard the matter. The Industrial Tribunal has considered the fact that whether in departmental inquiry, looking to the evidence on record, charge levelled against the workman is found to be proved or not and consequently, examined the question of finding, whether same is baseless or perverse or not. The Industrial Tribunal has appreciated the evidence led in departmental inquiry. It is necessary to note the discussion made by the Industrial Tribunal in Para.6. The accident report produced by Corporation before the Industrial Tribunal vide Exh.11, wherein, on Page-4, the reason has been given that how the accident has been occurred and

who is responsible. The opinion given by competent authority that considering the accident papers and spot inspection as well as considering the situation of the road, driver of Fiat Car was found to be negligent and responsible. However, if some more care was taken by the ST driver, then, accident can be avoided. This being an opinion of competent authority mentioned in the accident form, the driver of fiat card was held liable because he over take the vehicle and that is how, the accident occurred. However, the statement of concerned workman was recorded by police authority on 3.2.1991. In the said statement, the workman has made clear that from opposite side, one Luxury Bus was coming, but Fiat Car has tried to over take and ultimately, considering the serious situation, he stopped the ST Bus and due to over take, Fiat Car was dashed with the ST Bus. In inquiry, reporter Shri R.C.Patel was examined, who was not an eye witness. However, he admitted that the remarks given in the accident form (T-5) is correct. The

second question was asked to the reporter in inquiry that on what basis, the driver of ST Bus is found to be responsible. The answer is given by the reporter that after seeing the fiat car, if the bus was stopped, then, accident can be avoided. But, reporter was not aware about the fact that, whether in fact at the time of accident, ST bus was stopped by the driver or not. From the statement of driver in inquiry as well as before the police authority, it is clear that at the time of accident, he stopped the ST Bus. In inquiry also, reporter has stated that he was not present when the accident was occurred. The respondent workman was examined in departmental inquiry and narrated the same thing that driver of fiat car was responsible. Thereafter, findings have been examined by the Industrial Tribunal and come to the conclusion that considering the accident report, admitted by the reporter (Depot Manager) and Divisional Traffic Officer as well as Divisional Controller, no further evidence has been led by the

Corporation to prove the allegations against the workman. The reporter was not an eye witness and except him, no other witness namely conductor was examined in departmental inquiry. Therefore, the Industrial Tribunal has considered that on right side, 12 ft. road is open even though due to over take by fiat car, accident was occurred. Therefore, considering the evidence on record, Industrial Tribunal has rightly appreciated while coming to the conclusion that there was no legal evidence led by Corporation in inquiry for proving the charge against the respondent and, therefore, on that ground, Industrial Tribunal has set aside the punishment order. The Industrial Tribunal has also considered that respondent workman having more than 17 years' service and without considering the past record, the punishment order has been passed and, therefore, it has been set aside.

6. I have considered this discussion made by Industrial Tribunal and also considered the evidence led in departmental inquiry. The

accident form (T-5) is enough to hold that workman is not responsible for the accident. However, reporter has admitted the remarks made in the accident form. In inquiry, except reporter, no other witness was examined. Therefore, finding given by the competent authority is not based upon any legal evidence against the workman.

7. In view of this, the Industrial Tribunal has not committed any error while passing such award. There is no infirmity in the award. Therefore, according to my opinion, the Industrial Tribunal has not committed any error which require any interference by this Court while exercising the power under Article 227 of the Constitution of India. Hence, there is no substance in the present petition. Accordingly, present petition is dismissed. Rule discharged. Interim relief, if any, stands vacated.

(H.K.RATHOD,J.)

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